

**BOARD OF ZONING APPEALS  
PUBLIC HEARING  
MINUTES  
March 18, 2015**

The Board of Zoning Appeals (BZA) held three (3) advertised public hearings in the Council Room of the Vienna Town Hall, located at 127 Center Street, South, Vienna, Virginia, on March 18, 2015, beginning at 8:00 PM with Donald Chumley presiding as Chair. The following members were present: William Daly, Jr., Gregory Haight, George Creed, Robert Dowler and William Harrison. Absent was Robert Petersen. Also attending and representing staff were Matthew Flis, AICP-CUD, LEED-AP, Acting Director of Planning & Zoning, and Emily Goodman, Board Clerk.

Chairman Chumley took a moment to point out the powers and responsibilities of the Board which are listed on the back of the agenda. If an applicant is unhappy with a decision made by the Board, they have 30 days to appeal to the Circuit Court of Fairfax County.

Chairman Chumley informed all present that this would be Mr. Harrison's last meeting. He is moving to Texas to be with family. He will be greatly missed as he has made great contributions to the Board. He thinks it would be nice if the Mayor were to send him a note acknowledging his service.

Mr. Harrison thanked Chairman Chumley for his kind words and said he very much enjoyed working with the BZA.

**Item No. 1**

Request for approval of a conditional use permit for outdoor seating and live entertainment for Vienna Crossing, located at 416-418 Maple Avenue E, and in the C-1, Local Commercial zone. Application filed by John Gavarkavich, Walter L. Phillips, Inc., agent for JDC Vienna Garden LLC, owner.

Frank Watkins, president of Bignell Watkins Hasser Architects, project architect for Vienna Crossing, was sworn in to speak.

Mr. Watkins said they are requesting outdoor seating and live entertainment. The live entertainment is to be inside the Potbelly's during lunchtime and is normally one person with a guitar. Both Zoe's Kitchen and Potbelly's have an outdoor seating area on the sidewalk facing Maple Avenue. There are railings separating it from the walkway. The Planning Commission suggested making a better connection to the street and they have submitted a site plan revision to have a sidewalk that connects to the Maple Avenue sidewalk.

Mr. Watkins put a copy of the site plan on the projector and showed the Board the sidewalk, signage, bike racks and various landscaping.

Mr. Watkins said they are trying to encourage pedestrian activity which he understands the Town, with the new Maple Avenue Commercial (MAC) zoning district, is trying to do as well. The number of seats coincides with what was submitted in the plan and the parking requirements are met.

Mr. Creed asked if they are increasing the number of tables and Mr. Watkins said not beyond what was originally submitted to the Town. Mr. Creed said the number of seats is going from 140 to 158. Mr. Watkins said technically this building was a remodel and the previous restaurant had 200 seats. They have actually reduced the seating. They eliminated some of the less useful parking as they were encouraged to do so by the Town in an effort to clean up the site and make it more presentable. Mr. Creed said he understands the parking is by-right but asked what they are doing to mollify the neighbors. He was there at noon and all parking was occupied. People were coming in and out and cutting across from the bank. He talked to some of the neighbors and the people at the bank say they are getting complaints from their customers. The restaurant owner on the other side said they are affected as well. He thinks something needs to be done by the Vienna Crossing folks to stop the overflow parking.

Mr. Watkins said he is not sure how to answer the question. It is possible there is an exceptional amount of traffic because the two restaurants are newly open. When developing the site it was critical for them to understand what they could do on the site so communications with the Town from the start were very clear. Parking requirements and how it related to seating was understood from the very beginning. By Code they have three additional parking spaces more than they are required to have. As he said earlier, they were encouraged by Town staff not to over park the site but to take the opportunity to add landscaping. He understands the concern but is not sure what can be done at this point.

Mr. Daly said he thinks both restaurants will be successful but agrees they are probably experiencing an influx of patrons because they are new.

Mr. Creed said if they approve music during lunchtime it may increase the number of people by even more and he is concerned.

Mr. Watkins said he is sure Potbelly's feels the entertainment is part of the ambiance and at some level attracts patrons but he couldn't say if any data exists comparing business with or without music.

Mr. Dowler said the submission states the outdoor railings are Americans with Disabilities Act (ADA) compliant. He asked Mr. Watkins what that means. Mr. Watkins said he is not sure. Mr. Dowler asked if the railings are decorative or sufficient for safety. Mr. Watkins said they are pretty heavy but he can't say if they are sufficient for safety. They are commercial grade and either steel or aluminum. Mr. Dowler said in the past they have required protective barriers, something that is cemented in the ground and would protect to the best degree possible against vehicles; he would propose they do the same here. Mr. Watkins said the railings are definitely core set into concrete. Mr. Dowler said it is now popular to have outdoor seating but often there isn't enough room. It looks like this is a 12 foot sidewalk with 3 feet sectioned off to be the walkway. Mr. Watkins said the walkway is actually 42 inches.

Mr. Dowler said he was also at the site today and watched someone with a large car back out of a spot at Potbelly's. The car was about a foot over the curb. If the railing was there, he would have hit it. There is not very much room and he has concerns as well.

Mr. Watkins agreed it is tight. They have considered putting some tactile warnings closer to the curb. That way, when someone is backing up, they would get a textural warning. Mr. Dowler said the driver he saw wasn't unaware he was over the curb; there just wasn't any other way to get out of the parking space.

Mr. Haight asked if you can access the outdoor seating area from outside or if you have to enter through the restaurant and Mr. Watkins said you can enter from outside at both locations.

Mr. Creed said there are currently two restaurants and there will be an additional two stores at the location. He asked how many parking spaces the stores get. Mr. Watkins answered each store is allotted 1 space, the restaurant must provide 42 spaces and they are providing 45. Mr. Creed asked where the stores' employees park and Mr. Watkins said it is open parking. Mr. Creed said he realizes this is by-right but if the lot was already full today, he is concerned for when the new stores open. He wonders if the parking regulations in the Town's Zoning Code need to be adjusted.

Mr. Flis commented that the parking requirements and the number of seats they are permitted by-right are not in question. They have an approved site plan with an approved parking tabulation.

Mr. Creed said he understands and he is not challenging that tonight but he thinks in the future they need to rethink how things are done in Town as far as parking allocations. His concern for tonight is what can be done about the overflow parking.

Mr. Watkins said he is not sure what could be done on their site but he is sure Mr. Donegan would be amenable to helping the adjacent property owners put signage on their site clarifying parking.

Mr. Dowler said he is familiar with the Potbelly's in Fairfax City. He has eaten there when there has been a musician present. It is more of an accessory; it is not going to pull in a crowd. He doesn't see the performance part as a detriment to anyone.

Mr. Harrison asked if there is a plan to do away with the curb that separates the parking area from next door and Mr. Watkins answered he understands Mr. Donegan approached the bank with that possibility but they did not respond favorably.

Mr. Creed suggested getting rid of the railing and putting in bollards. Mr. Watkins said that is something they could do but suggested putting them in at Potbelly's where the seating area is right at the curb but not at Zoe's where it is set back.

Chairman Chumley asked if there were any additional questions or comments and as there were none, he closed the item.

## **Item No. 2**

Request for approval of a variance from Section 18-169 of the Vienna Town Code to permit the construction of a window well beyond the required setback lines located at 210 Center Street N, and

in the RS-10, Single-Family Detached Residential zone. Filed by Brian Rosenheim of Phoenix Home Services, Inc., agent for Samuel Kaplan and Jennifer Strimel, owners.

Brian Rosenheim of Phoenix Home Services, agent for the property owners, was sworn in to speak.

Mr. Rosenheim said the homeowners would like to install an egress window in their basement so they can have a means of escape in case of an emergency. There is no place on the entire property where they could do so without a variance.

Mr. Dowler asked Mr. Rosenheim to describe what it will look like. Mr. Rosenheim said it is built with cinderblocks; it will have a ladder and be approximately four feet by four feet with a three foot by three foot window.

Mr. Creed asked how many legal bedrooms the house has and Mr. Rosenheim said he is not sure. Mr. Creed asked where the bedrooms are located and Mr. Rosenheim answered on the top floor. They are not putting a bedroom in the basement; they just want to be able to escape. Mr. Creed asked the distance the window will be off the floor and Mr. Rosenheim answered 44 inches.

Mr. Dowler asked if it will be placed on the back of the house and Mr. Flis said it is actually on the side. The house faces Center Street N. The 25 foot setback on the front and the 35 foot setback on the rear essentially cover the entire property which is why the applicant needs a variance. Mr. Dowler said they have a previous Order from 1998 where the BZA made the house legally nonconforming. Mr. Flis said that is correct but it was only for the current footprint of the home; they are wishing to expand that footprint with a window well. Mr. Dowler asked why the window well would not be by-right since Town Code allows window wells to encroach four feet into the setback and the setback on this house was made legal by the previous Order. Mr. Flis answered that is a stance the Board could take but it is up to the Board to make the decision.

Mr. Creed asked if there were any other windows in the basement or any other means of escape and Mr. Rosenheim said no.

Chairman Chumley said the lot is very unusual. Mr. Flis agreed and added because the house is addressed off Center Street North, it is even more unusual.

Mr. Creed asked what the hardship is and Mr. Rosenheim said they want to be able to use their basement and feel safe.

Chairman Chumley said the hardship is the odd shaped lot. The house would not be built that way today. No other house on the block has the same issue.

Chairman Chumley asked if there were any additional questions or comments and as there were none, he closed the item.

### **Item No. 3**

Request for approval of a conditional use permit for outdoor seating for Chase the Submarine, located at 132 Church Street NW, in the C-1B, Pedestrian Commercial zone. Application filed by Tom Kylo of Kylo + Pattana Architecture/Interiors, agent for Michael Amouri and Tim Ma, owners.

Chairman Chumley said it appears no one is present to represent the application and suggested tabling the item until next month.

Mr. Dowler asked Mr. Flis if he knew why no one was present and Mr. Flis said no.

Mr. Flis asked Ms. Goodman if the notice was sent to the applicant and she confirmed it was.

Mr. Harrison made a motion to table the item until next month.

Mr. Daly seconded the motion.

Motion:	Harrison
Second:	Daly
Passed:	6-0

### **BOARD OF ZONING APPEALS PUBLIC HEARING MINUTES March 18, 2015**

The Board of Zoning Appeals (BZA) met in regular session to review three (3) advertised public hearings in the Council Room of the Vienna Town Hall located at 127 Center Street, South, Vienna, Virginia, on March 18, 2015, beginning at 8:00 PM with Donald Chumley presiding as Chair. The following members were present: William Daly, Jr., Gregory Haight, George Creed, Robert Dowler and William Harrison. Absent was Robert Petersen. Also attending and representing staff were Matthew Flis, AICP-CUD, LEED-AP, Acting Director of Planning & Zoning and Emily Goodman, Board Clerk.

### **Item No. 1**

Request for approval of a conditional use permit for outdoor seating and live entertainment for Vienna Crossing, located at 416-418 Maple Avenue E, and in the C-1, Local Commercial zone. Application filed by John Gavarkavich, Walter L. Phillips, Inc., agent for JDC Vienna Garden LLC, owner.

Mr. Creed said he would like to split the outdoor seating and live music and vote on each item separately.

Mr. Daly made a motion to approve the request for a conditional use permit for outdoor seating for Vienna Crossing, located at 416-418 Maple Avenue E, and in the C-1, Local Commercial zone, pursuant to the application filed.

Chairman Chumley seconded the motion.

Mr. Daly supported his motion by saying he has the same concerns as Mr. Creed; however, his alternate concern is this parking is by-right. They have three spaces more than is required. Mr. Creed's position that the Town needs to look at future plans for parking may be a solution. They cannot take action against this owner when the site meets the requirements set forth by the Town Code.

Chairman Chumley said he also shares Mr. Creed's concerns regarding parking and the Town should take a look at current parking requirements but he does not want to penalize this owner for something that is more of a general problem for the Town.

Mr. Dowler said he is persuaded by their comments but he wonders why the BZA is even involved in outdoor seating on property like this that does not abut to a public sidewalk and is totally on private property. The Town should be able to come up with a set of standards that people need to meet if they want outdoor seating. He would like the Board to recommend the Town to do so.

Chairman Chumley said he agrees with Mr. Dowler's statements.

Mr. Daly asked if the parking requirement would be different if all the seats were indoors instead of some being outdoors and Mr. Flis said no. At the Planning Commission the discussion came up that the outdoor seating does not actually create more traffic because the people who are sitting outdoors would have been sitting indoors. Mr. Daly said the parking problems at Noodles and Company are generally on nice days when people want to sit outside so parking may be less of a problem during the eight months of the year when people do not want to sit outside. He does worry that the problem will be exacerbated when the two other stores open up but hopefully by then some of the rush to check out the new restaurants will have subsided.

Mr. Creed suggested amending the motion and requiring the placement of bollards instead of the railing in front of Zoe's Kitchen.

Mr. Dowler said if they are going to do that they should have them put the bollards in front of Potbelly's as well.

Mr. Creed agreed to put them in front of both restaurants.

Mr. Daly expressed concern regarding a last minute change after an 8-0 vote by the Planning Commission and being vetted by Town staff. He does not know if the railing that is proposed would provide the same level of safety as bollards. If there is going to be an amendment, he would prefer to require approval of a barrier that provides the necessary level of safety, whether bollards or the railing, for any car that might hit it. If the railing is made of steel and anchored in concrete, it may give the level of protection that is needed. His other hesitancy is, now with a public record, if there ever is an injury there, they are exposing themselves to a significant level of liability for any injury

associated with a car crossing the barrier. The owner, in conjunction with the Town, can determine if the safety issue is taken care of.

Mr. Dowler said in previous cases they have required bollards but the idea is to keep people safe. Otherwise, he doesn't understand why they have anything to do with the process.

Mr. Daly said he agrees. He just doesn't know if the railings are adequate to keep people safe. He absolutely wants there to be a safety barrier for pedestrians.

Mr. Creed said he would like to keep his motion as it was.

Mr. Haight wondered if there is an entity within the Town capable of determining what meets the appropriate level of safety and Mr. Harrison said he understands that is the responsibility of the BZA. However, they don't have criteria to go by. They usually require bollards but they haven't considered alternatives and don't know if the railing are sufficient or not.

Mr. Haight suggested amending the motion to require bollards or similar items capable of providing protection.

Mr. Creed said he had no problem with that amendment.

Mr. Daly suggested the wording "require bollards or similar items which are capable of providing protection to the satisfaction of Town staff".

Chairman Chumley called for a vote on Mr. Daly's motion which included a friendly amendment by Mr. Creed.

Motion:	Daly
Second:	Chumley
Passed:	5-1

Aye: Daly, Haight, Chumley, Dowler, Harrison  
Nay: Creed

Mr. Daly made a motion to approve a conditional use permit for live entertainment for Vienna Crossing, located at 416-418 Maple Avenue E, in the C-1, Local Commercial zone pursuant to the application filed.

Chairman Chumley seconded the motion.

Mr. Daly supported his motion by saying the live entertainment simply increases ambiance; it will not increase parking or foot traffic.

Chairman Chumley said he agrees, as did Mr. Harrison.

Motion:	Daly
Second:	Chumley

Passed: 6-0

## **Item No. 2**

Request for approval of a variance from Section 18-169 of the Vienna Town Code to permit the construction of a window well beyond the required setback lines located at 210 Center Street N, and in the RS-10, Single-Family Detached Residential zone. Filed by Brian Rosenheim of Phoenix Home Services, Inc., agent for Samuel Kaplan and Jennifer Strimel, owners.

Mr. Dowler made a motion to approve the request for a variance from Section 18-169 of the Vienna Town code to permit construction of a window well beyond the required setback lines located at 210 Center Street N.

Mr. Haight seconded the motion.

Mr. Dowler supported his motion by saying the shape of the two lots creates a hardship due to exceptional narrowness. Building a house on the lot that conforms to the setbacks would be very difficult. As far as the particular issue of the window well, it is a reasonable request. His personal view is they should be able to do it by-right considering the previous Order which made the house legally nonconforming.

Mr. Haight said he agreed with Mr. Dowler's assessment of the hardship.

Mr. Harrison added the request is not for a frivolous purpose.

Mr. Creed said he supports the motion from a safety standpoint.

Motion:	Dowler
Second:	Haight
Passed:	6-0

## **Approval of the Minutes**

Mr. Dowler made a motion to approve the minutes from the February 18, 2015 meeting.

Mr. Harrison seconded the motion.

Chairman Chumley said he would abstain as he was absent from the meeting.

Motion:	Dowler
Second:	Harrison
Passed:	5-0

Abstain: Chumley



## Regular Meeting

Chairman Chumley said one of the functions of the Board is to take note if they are seeing a particular issue come up on a regular basis and to determine if the Town regulations might need to be changed. Massage therapy locations and handicap ramps used to need a conditional use permit until the Board recommended the Town Council alter the Town Code.

Mr. Dowler made a motion to recommend that Town Council devise requirements for outdoor restaurant seating. Criteria should include safety for pedestrians and automobiles. The process should be administrative and does not need to go before the BZA or Planning Commission.

Mr. Harrison wondered if the Town engineer who is involved with traffic calming should be involved in the process.

Mr. Dowler said he envisions Town staff working together to set up the criteria.

Mr. Creed said he intends to bring forth a motion regarding parking in Town. The way things are being tabulated right now is not working.

Mr. Daly seconded Mr. Dowler's motion.

Motion:	Dowler
Second:	Daly
Passed:	6-0

Mr. Creed asked Mr. Flis what can be done right now about overflow parking at Vienna Crossing.

Chairman Chumley said Rite Aid had a similar problem and they put up signs stating they will tow your vehicle if you are parking in their lot but not visiting their store.

Mr. Creed said the store owners he visited said they have signs on order. He asked if the Town can try to get the property owner, Mr. Donegan, to get involved with the other property owners. Mr. Flis said he has spoken with Mr. Donegan and he has been in communication with at least the bank to try to talk through some of these issues.

Mr. Creed wished for the Board to task Mr. Flis with contacting the property owner, Mr. Donegan, to encourage him to get with the surrounding property owners to figure out the parking situation.

Chairman Chumley said he is not sure the Town should be getting involved in parking disputes between private property owners.

Mr. Flis said he is happy to reach out to Mr. Donegan. They have been in regular communication.

Mr. Creed made a motion the Board write a letter to the Town Council recommending the Town evaluate the allocation of parking in commercial zones to try to prevent overflow parking.

Mr. Dowler seconded the motion and said this area is not the only one in Town with a parking problem and putting up signs threatening to tow people is not going to make anyone happy. He agrees the parking ratios need to be reevaluated.

Mr. Daly said the parking at Noodles & Company has gotten a lot better. He would be interested to see a comparison between our parking requirements and other local jurisdictions. He believes that would be helpful for the Town Council in making any decisions. There is a parking shortage throughout the Town which wasn't helped when the parking garage fell through.

Mr. Dowler said the BZA never reviewed the conditional use permit for Noodles & Company. It went straight to the Town Council. There was supposed to be an agreement between Noodles & Company and the Church. The employees were supposed to park across the street at the Church.

Mr. Creed said another bad parking situation is at 301 Maple Avenue W. Some of those condo buildings are specifically not letting others cross their lot. The ones closes to Pleasant St NW have put up a sign that says "Private Property. Do Not Enter".

Chairman Chumley called for a vote on the motion.

Motion:	Creed
Second:	Dowler
Passed:	6-0

Mr. Dowler reminded the Board they needed to elect a chair and vice chair as they had deferred the item at their last meeting.

Mr. Dowler made a motion for Chairman Chumley to remain as chair and Mr. Creed remain as vice chair for the next year.

Mr. Daly seconded the motion.

Motion:	Dowler
Second:	Daly
Passed:	6-0

Chairman Chumley wished Mr. Harrison well and said right up until the end he did a fantastic job. The great thing about Vienna is the quality of people available to serve on various boards.

### **Adjournment**

The meeting was adjourned at 9:42 PM.

Respectfully submitted,  
Emily L. Goodman  
Clerk of the Board of Zoning Appeals